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# COMMONWEALTH OF VIRGINIA



## OFFICE OF THE GOVERNOR

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### **NUMBER TWENTY ONE (2010)**

#### **USE OF VIRGINIA'S VOLUME CAP ALLOCATIONS FOR QUALIFIED ENERGY CONSERVATION BONDS**

##### **Background**

Pursuant to Section 54D(e) of the Internal Revenue Code and as described in Notice 2009-29 of the Internal Revenue Service, IRB 2009-16 ("Notice 2009-29"), the Commonwealth of Virginia (the "Commonwealth") received \$80,600,000 of the Qualified Energy Conservation Bonds ("QECBs") national bond limitation (the "Commonwealth Allocation"). QECBs are tax credit bonds that may be issued by state or local governments for one or more qualified conservation purposes described in Notice 2009-29.

Notice 2009-29 further provides that the Commonwealth Allocation shall be initially suballocated among large local governments in the Commonwealth (the "Originally Awarded Localities") in an amount that bears the same ratio to the Commonwealth's Allocation as the population of each of such large local governments bears to the population of the Commonwealth (the "Original Locality Suballocations"). For purposes of Section 54D of the Code, the term "large local government" means any municipality or county that has a population of 100,000 or more. In making the Original Locality Suballocations, Notice 2009-29 requires the Commonwealth to use population figures for its large local governments based on available data from the United States Census Bureau for the period that is closest in time to that used for the Commonwealth and released by the Census before 2009. After such suballocation, any amount remaining shall belong to the Commonwealth (the "Original Commonwealth Suballocation"). Originally Awarded Localities may reallocate all or any portion of their respective Original Locality Suballocations to the Commonwealth.

Section 54D(e)(3) of the Internal Revenue Code further provides that not more than 30 percent of the Commonwealth Allocation of QECBs be private activity bonds as determined under Section 141 of the Code (the “70% Use Requirement”).

QECBs provide a cost-effective option for financing state and local energy conservation projects. It is important that the Commonwealth and its localities have this financing mechanism available to facilitate projects that reduce energy consumption and energy costs and promote energy conservation. Therefore, to the extent any Originally Awarded Locality determines not to use its Original Locality Suballocation, it is imperative to provide an orderly process for the re-allocation of any such unused amounts (the “Returned Locality Suballocations”) for other qualifying projects. Moreover, it is critical that the Commonwealth establish a procedure to reallocate any Returned Locality Suballocations. Lastly, the Commonwealth must establish a procedure to ensure compliance with the 70% Use Requirement.

Accordingly, by virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and Sections 2.2-103 and 2.2-435.7 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby establish the following Original Locality Suballocations and Original Commonwealth Suballocation, and further direct Chief of Staff Martin Kent to serve as the Commonwealth’s QECB allocation director (the “Allocation Director”) to establish a procedure for the reallocation of any Returned Locality Suballocations.

## Suballocation

1. The Original Commonwealth Allocation is \$80,600,000.
2. The Original Locality Suballocations are set forth below:

<u>Locality</u>	<u>Population</u>	<u>Percentage</u>	<u>Suballocation</u>
Fairfax County	1,004,151	13.04%	\$ 10,512,656
Virginia Beach City	435,004	5.65%	\$ 4,554,143
Prince William County	359,588	4.67%	\$ 3,764,598
Chesterfield County	299,022	3.88%	\$ 3,130,521
Henrico County	289,460	3.76%	\$ 3,030,414
Loudoun County	277,346	3.60%	\$ 2,903,590
Norfolk City	235,982	3.07%	\$ 2,470,542
Chesapeake City	218,830	2.84%	\$ 2,290,975
Arlington County	203,909	2.65%	\$ 2,134,764
Richmond City	199,991	2.60%	\$ 2,093,745
Newport News City	180,810	2.35%	\$ 1,892,936
Hampton City	146,466	1.90%	\$ 1,533,382
Alexandria City	139,848	1.82%	\$ 1,464,096
Stafford County	120,621	1.57%	\$ 1,262,805
Spotsylvania County	118,887	1.54%	\$ 1,244,652
Portsmouth City	101,931	1.32%	\$ 1,067,136

Total Locality Suballocation	\$ 45,350,954
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3. The Original Commonwealth Suballocation is \$ 35,249,046
4. Any Originally Awarded Localities that do not plan to use any portion of their Original Locality Suballocations should notify the Allocation Director so that their Returned Locality Suballocations may be reallocated to another locality or project within the Commonwealth.
5. The Allocation Director shall develop a process for the application, evaluation and re-allocation of any Returned Locality Suballocations to maximize the use of this financing mechanism to promote energy conservation within the Commonwealth.
6. Each Originally Awarded Locality shall ensure compliance with the 70% Use Requirement and upon issuance of any QECBs using such Originally Awarded Locality's Original Locality Suballocation shall provide a copy of the IRS Form 8038 to the Allocation Director.
7. The Allocation Director is hereby authorized to delegate to any official or agency or department of the Commonwealth any matter or task described herein, to take any action that he, as the Allocation Director, deems necessary or desirable to affect the purposes hereof, and to create an advisory committee consistent with, and in furtherance of, this Executive Order.
8. Determination of compliance with the procedures and requirements set forth herein or in the additional guidance, including any filings to be made and the timing and substance thereof, shall be subject to the sole discretion of the Allocation Director.

This Executive Order shall be effective upon its signing and shall remain in full force and effect until December 31, 2013, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 20<sup>th</sup> day of July, 2010.

Robert F. McDonnell, Governor

Attest:

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Secretary of the Commonwealth